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SEP 29 1999

September 29, 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA MESSENGER

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554


RE: *Notice of Ex Parte Communications*  
*In the Matter of Applications for Transfer of Control to SBC Communications*  
*Inc. of Licenses and Authorization Held by Ameritech Corporation,*  
*CC Docket No. 98-141*

Dear Ms. Salas:

On September 28, 1999, Jeffrey Blumenfeld, Christy Kunin, and the undersigned on behalf of Rhythms NetConnections Inc., met with Commissioner Powell, and his Legal Advisor, Kyle Dixon, regarding the SBC/Ameritech merger. Attached is a copy of the items distributed during our meeting.

Should you have any questions regarding this filing, please do not hesitate to contact me at (202) 955-6300.

Respectfully submitted,

  
Stephanie Joyce  
Associate

Enclosure

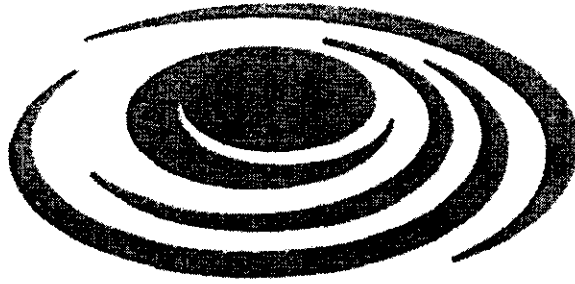
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Federal Communications Commission  
Office of Secretary



# RHYTHMS<sup>TM</sup>

Analysis and Proposed Amendments

Proposed Conditions

SBC-Ameritech Merger

September 28, 1999

## SBC-Ameritech Proposed Merger Conditions: Turning Back the Clock

The proposed Merger Conditions directly contravene settled FCC rules as well as provisions of the 1996 Act in several substantial respects, including:

### Nondiscrimination

- Section 251 requires nondiscriminatory treatment for interconnection, access to UNEs and provisioning of collocation facilities
- Proposal approves SBC-Ameritech withholding specific loop information available to SBC (§ 15), imposing “conditioning” charges not passed through to SBC customers (§ 21), and severely limits ability of CLECs to opt into existing SBC interconnection contracts (§§ 42-44)

### Truly Separate Subsidiaries

- Section 272 and *Non-Accounting Safeguards Order* (1996) require “maximum separation” of subsidiaries, with truly separate ownership and operations; FCC proposed a truly separate advanced services affiliate in the *Advanced Services Memorandum Opinion and Order* at paragraphs 95-96 (Aug. 7, 1998)
- Proposed affiliate need not be operational until the later of: 270 days after Closing Date or 30 days after receipt of all necessary state approvals. § 4(n)(3)

### Loop Make-up Information

- *First Report and Order* § 379, *Advanced Services MO&O* § 56 and *UNE Remand Order* each require all ILECs to provide comprehensive, raw information about the physical characteristics of loops
- Proposal includes 14 to 22-month schedule for providing loop length and answers to written, address-specific loops § 15a.
- SBC affiliate will access loop information 180 days prior to date that CLECs access same information. § 4(n)(6)

### Provisioning xDSL-Capable Loops

- Reliance on Missouri Order improper because it applies charges to 12-18 Kft loops. § 21. Compare SBC Comments, CC Docket 98-147, at 21: “Loadings are required on lines of over 18,000 feet in order to provide traditional voice service.”
- Use of Missouri rates as proxy rates will have a prejudicial effect on further state commissions

Collocation Compliance

- *Advanced Services Order*, effective June 1, 1999, has not been complied with by any ILEC
- Proposal permits SBC to dictate when and how compliance will occur—and failure to comply with the *Advanced Services Order*, to be outlined in Preliminary Audit Report, will receive no consequences.

	LEGAL OBLIGATION	PROPOSED CONDITIONS
Nondiscrimination	§ 251(c) and First Report and Order ¶¶ 315 require ILECs to provide network access equal to the access enjoyed by the ILEC	Para. 8a permits SBC and its affiliates to employ line sharing exclusively unless explicitly ordered otherwise by the Commission in a forthcoming Order. Line sharing surrogate loop rates do not remedy the significant problems of outside plant exhaustion and time-to-market attendant with stand alone loop provisioning.
Truly Separate Subsidiaries	§ 272 and <i>Non-Accounting Safeguards Order</i> (1996) require maximum separation in ownership and operation; FCC proposed such an implementation in the August 7, 1998 <i>Advanced Services Memorandum Opinion and Order</i> ¶¶ 95-96	Para. 4 does not require affiliate to operate until later of 270 days after Closing Date or 30 days after affiliate receipt of required state approvals
Collocation Compliance	<i>Advanced Services Order</i> (effective June 1, 1999) set national minimum collocation standards with which no ILEC has yet complied	Para. 39 provides no enforcement of FCC rules based on present SBC noncompliance; final report not due until 10 months after Closing Date, making all rules meaningless for most DSL providers
Loop Make-up Information	<i>First Report and Order</i> ¶ 379, <i>Advanced Services MO&amp;O</i> ¶ 56 and <i>UNE Remand Order</i> require provision of comprehensive loop make-up information, including actual loop length and gauge and presence of devices, DLC or DAMLs on loop	Para. 20a provides only theoretical loop length 14 or 22 months after Closing Date; para. 20c provides more extensive information only via written, address-specific request
xDSL-Capable Loops	<i>First Report and Order</i> ¶¶ 381-382, <i>Advanced Services MO&amp;O</i> ¶ 53 and <i>UNE Remand Order</i> require provision of device-free, unloaded xDSL-capable copper loops. TELRIC cost-based, forward-looking principles apply ( <i>First Report and Order</i> ¶ 382 n.830).	Para. 21 adopts and ratifies the decision of the Missouri Commission regarding loop de-conditioning, which indicates that de-conditioning is proper between 12 and 18 kilofeet in direct contravention of SBC statements and settled industry loop design rules.

Proposed Amendments: Fix It Fast

Nondiscrimination

- Include overriding provision citing Section 251, and all rules promulgated pursuant to Section 251, to govern all provisions of Conditions

Truly Separate Subsidiaries

- Require all equipment transactions to be arm's length and open to public view
- Prohibit direct transfer of any existing DSL customer, ISP or otherwise, to SBC affiliate

Loop Make-up Information

- Require SBC to issue a report by Merger Closing Date that reveals all sources of loop make-up information
- Impose requirement that SBC comply with all existing FCC rules and provide access to all loop data, retail-based or otherwise, to any requesting CLEC

Provisioning xDSL-Capable Loops

- Prohibit imposition any loop de-conditioning charges, subject to true-up, pending state commission or FCC ruling on proper TELRIC rates based on investigated ILEC cost studies

Collocation Compliance

- Include in Conditions the proviso that the Commission can and will investigate and sanction any evidence of SBC or Ameritech failure to comply with the Advanced Services Order based on Preliminary Audit Report or other investigation